In the High Court of Judicature at Madras

Dated: 10.03.2006

Coram

The Honourable Mr. JUSTICE P.K.MISRA

Writ Petition Nos.22131 to 22138, 22170 to 22178,
22179 to 22186 and 22080 to 22088 of 2004

W.P.No.22131 of 2004:

The Management
CMC & Hospital, Arcot Road,
Vellore - 4
Rep. by General Superintendent
.... Petitioner in all WPs

Vs.

1. The Joint Commissioner of Labour
Appellate Authority under Payment of Gratuity Act
Chennai - 600 006.

2. The Asst. Commissioner of Labour,
Office of the Deputy Commissioner of Labour - I
(Authority under payment of Gratuity Act)
Chennai - 600 006.

... Respondents 1 and 2 in all Wps

3. S.Ganesan
...Respondent 3 in W.P. 22131 of 2004

D. Sundararajan
C/o R.c. Paul
No. 8 Parry Nagar,
Ranipet 632 401 ... R3 in WP 22132 of 2004

P. Velayudam
C/o R.C. Paul
No. 8 Parry Nagar,
Ranipet 632 401 ... R3 in WP 22133 of 2004

C. Appan
C/o. R.C. Paul,
No. 8 Parry Nagar,
Ranipet 632 401. ... R3 in WP 22134 of 2004

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K.P. Selvaraj
C/o. R.C. paul,
No. 8 Parry Nagar,
Ranipet 632 401. ... R3 in WP 22135 of 2004

A.I. Vijayakumar,
C/o. R.C. Paul,
No. 8 Parry Nagar,
Ranipet 632 401 .. R3 in WP 22136 of 2004

G. Sampath
C/o. R.C. Paul,
No. 8 Parry Nagar,
Ranipet 632 401 .. R3 in WP 22137 of 2004

P. Krishnan
C/o. R.C. Paul,
No. 8 Parry Nagar,
Ranipet 632 401 .. R3 in WP 22138 of 2004

S. Sathiyaseelan .. R3 in WP 22170/04

N.R. Alice ... R3 in WP 22171/04

A.I. Vijayakumar .. R3 in WP 22172/04

Mary Kesaval .. R3 in WP 22173/04

K.G. Pramanandam .. R3 in WP 22174/04

Y.R. Jayaseelan .. R3 in WP 22175/04

Glory .. R3 in WP 22176/04

P. Velayudam .. R3 in WP 22177/04

D. Sundararajan .. R3 in WP 22178/04

M.S. Arjunan .. R3 in WP 22179/04

K.P. Selvaraj .. R3 in WP 22180/04

P. Krishnan .. R3 in WP 22181/04

S. Ganesan .. R3 in WP 22182/04

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David Sampath Kumar ... R3 in W.P.22183 of 2004
G. Sampath ... R3 in W.P.22184 of 2004
C. Kanagaraj ... R3 in W.P.22185 of 2004
C. Appan ... R3 in W.P.22186 of 2004
S. Sathiyaseelan ... R3 in W.P.22080 of 2004
K.G. Paramanandam ... R3 in W.P.22081 of 2004
M.S. Arjunan ... R3 in W.P.22082 of 2004
David Sampath Kumar ... R3 in W.P.22083 of 2004
Mary Kesaval ... R3 in W.P.22084 of 2004
N.R. Alice ... R3 in W.P.22085 of 2004
Glory A ... R3 in W.P.22086 of 2004
C. Kanagaraj ... R3 in W.P.22087 of 2004
Y.R. Jayaseelan ... R3 in W.P.22088 of 2004

Petitions filed under Article 226 of the Constitution of India to issue a Writ of Certiorari and (1) and (4) calling for the records connected with P.G.A. Nos. 9 to 25 of 2004 on the file of the first respondent, Appellate Authority under the payment of Gratuity Act Viz., the Joint Commissioner of Labour, Chennai and quash the Common order dated 08.06.2004 made in P.G.A.Nos.27 to 43/98 & P.G.A.Nos.9 to 25 of 2004 in WP.No.22131 to 22138 & 22080 to 22088/2004 respectively

2 & 3 to call for the records connected with P.G.A.Nos.27 to 43 of 1998 on the file of the First Respondent, Appellate Authority under the payment of gratuity Act Viz., The Joint Commissioner of Labour chenai and quash the common order dated 8.6.2004 made in PG.A.Nos.27 to 43 of 1998 & P.G.A.Nos.9 to 25 of 2004 (W.P.No.22170 to 22178 of 2004) and (W.P.22179 to 22186 of 2004) respectively.

1. in so far as it relates to P.G.A.No.24 of 2004 (WP.No.22131/2004)
2. in so far as it relates to P.G.A.No.19 of 2004 (WP.No.22132/2004)
3. in so far as it relates to P.G.A.No.23 of 2004 (WP.No.22133/2004)
4. in so far as it relates to P.G.A.No.18 of 2004 (WP.No.22134/2004)
5. in so far as it relates to P.G.A.No.17 of 2004 (WP.No.22135/2004)
6. in so far as it relates to P.G.A.No. 9 of 2004 (WP.No.22136/2004)
7. in so far as it relates to P.G.A.No.20 of 2004 (WP.No.22137/2004)
8. in so far as it relates to P.G.A.No.16 of 2004 (WP.No.22138/2004)
9. in so far as it relates to P.G.A.No.27 of 1998 (WP.No.22170/2004)
10. in so far as it relates to P.G.A.No.30 of 1998 (WP.No.22171/2004)
11. in so far as it relates to P.G.A.No.28 of 1998 (WP.No.22172/2004)
12. in so far as it relates to P.G.A.No.32 of 1998 (WP.No.22173/2004)
13. in so far as it relates to P.G.A.No.40 of 1998 (WP.No.22174/2004)
14. in so far as it relates to P.G.A.No.33 of 1998 (WP.No.22175/2004)
15. in so far as it relates to P.G.A.No.31 of 1998 (WP.No.22176/2004)
16. in so far as it relates to P.G.A.No.42 of 1998 (WP.No.22177/2004)

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17.in so far as it relates to P.G.A.No.38 of 1998 (WP.No.22178/2004)
18.in so far as it relates to P.G.A.No.29 of 1998 (WP.No.22179/2004)
19.in so far as it relates to P.G.A.No.37 of 1998 (WP.No.22180/2004)
20.in so far as it relates to P.G.A.No.36 of 1998 (WP.No.22181/2004)
21.in so far as it relates to P.G.A.No.35 of 1998 (WP.No.22182/2004)
22.in so far as it relates to P.G.A.No.41 of 1998 (WP.No.22183/2004)
23.in so far as it relates to P.G.A.No.39 of 1998 (WP.No.22184/2004)
24.in so far as it relates to P.G.A.No.43 of 1998 (WP.No.22185/2004)
25.in so far as it relates to P.G.A.No.34 of 1998 (WP.No.22186/2004)
26.in so far as it relates to P.G.A.No.10 of 2004 (WP.No.22080/2004)
27.in so far as it relates to P.G.A.No.21 of 2004 (WP.No.22081/2004)
28.in so far as it relates to P.G.A.No.11 of 2004 (WP.No.22082/2004)
29.in so far as it relates to P.G.A.No.25 of 2004 (WP.No.22083/2004)
30.in so far as it relates to P.G.A.No.14 of 2004 (WP.No.22084/2004)
31.in so far as it relates to P.G.A.No.12 of 2004 (WP.No.22085/2004)
32.in so far as it relates to P.G.A.No.13 of 2004 (WP.No.22086/2004)
33.in so far as it relates to P.G.A.No.22 of 2004 (WP.No.22087/2004)
34.in so far as it relates to P.G.A.No.15 of 2004 (WP.No.22088/2004)

For Appellant in all W.Ps : Mr.Sanjay Mohan for
M/s. Ramasubramanian Associates

For third Respondent in all Wps: Mr.S.T.Vardarajulu

O R D E R

Heard the learned counsel appearing for the parties.

2. At the threshold, it must be said that the learned counsel appearing for the management of CMC & Hospital/petitioner fairly submitted that irrespective of the decision in the present writ petitions, that is to say, whether the impugned order is interfered with or modified or confirmed, the petitioner is willing to pay the amount payable on the basis of the order of the appellate authority as Ex-gratia payment to the concerned workmen, but the management is interested to pursue the present writ petitions as a matter of principle on the question of law involved.

3. The present writ petitions are sequel to the award passed by Justice Natarajan, who was appointed as an Arbitrator by the Supreme Court to resolve the dispute, which had arisen between the management and the union relating to non-engagement/termination of certain workmen working in the hospital. It is not necessary to notice in detail the various facts and events, which culminated in the appointment of Justice Natarajan is an Arbitrator. Justice Natarajan in the award came to the conclusion that the non-employment/termination of the concerned workmen by the management

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was not in accordance with law. However, it was observed by the learned Arbitrator as follows:

> "Having come to this conclusion, the question which follows is the manner in which relief should be granted to the workers to atone their grievance. While the Union's Counsel would contend that in the case of blue collar workers, reinstatement is the rule and alternate reliefs the exception (vide O.P.Bhandari vs. I.T.D.C.(1986 II LLJ 509), the management's counsel argued that the relief of reinstatement is not to be granted automatically or in a mechanical manner and that the granting of the relief of reinstatement has to be decided in the light of various relevant and vital factors which should go into the reckoning. He referred in this connection to Hindustan Steels Ltd. vs. A.K.Roy AIR 1970 S.C.1401, Sant Raj vs.O.P.Singla AIR 1985 S.C.617, Anil Kumar vs. M/s. Sarawatipur Tea Co Ltd. AIR 1982 SC 1062 and workmen vs.Bharat Fritz Werner P Ltd. 1990(3) SCC 565.
>
> The granting of relief of Christy and Vijayakumar does not present any difficulty because the former had died on 25.11.1988 and the latter has superannuated on 9.6.1992. Therefore there is no question of the relief of re-instatement being given to these two workers.
>
> As regard the other employees, except Sigamani who is not eligible to claim any relief, the question would be whether they should be granted the relief of re-instatement. I have already referred to the conflicting contentions of the union and the management regarding the relief grantable to the employees. Irrespective of their contentions, what has to be noticed in this case is that it is not the usual type of a dispute between a management and its workers, but a case where the interests and welfare of others are very much involved. To put things more clearly, this is a case where the dispute between the management and the workers will affect not only their respective interests but will also affect the interests of the students studying in the Medical College and the interests and the welfare of the thousands of patients coming to the hospital for treatment either as out-patients or as in-patients. The management institution has acquired a reputation throughout the country for the excellent medical services offered by it and therefore patients from far

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and near come to the hospital for treatment. Such being the case, unless there is harmonious relationship and good understanding between the management and the workers, the real sufferers would be the patients in the hospital and the students in the Medical College. In my opinion this is a very relevant and crucial factor to be borne in mind while deciding the nature of the relief that should be granted to the workers. It may be said for argument's sake that after the lapse of so many years, the bitter feelings between the management and the workers would have disappeared and the parties would have buried their hatchets. I am afraid that expectation of such a change of mental attitude between the parties would be only wishful thinking. Any relief of re-instatement granted to the workers would not only lead to a resumption of the bickerings between the parties but would also affect the smooth functioning of the College and the hospital and more than that, the health and the lives of the patients coming to the hospital would also be endangered. I am therefore clearly of the view that the only relief that can be granted to the workers will be the payment of monetary compensation to them for their removal from service in derogation of the provisions of Sec.25F of the I.D. Act."

4. Learned Arbitrator then proceeded to quantify the payment to be made as compensation to the person for the removal from service in derogation of the provisions of Section 25 of the I.D. Act. Ultimately, the Arbitrator came to the conclusion that the workers should be paid backwages for their respective periods of non-employment at the rate of two thirds of their last drawn salary including allowances. So far as the compensation to be paid in lieu of re-instatement is concerned, the Arbitrator decided that the payment of annual income for a period of eight years would be fair amount of compensation. Ultimately, on the basis of such reasoning, the amount payable to each of the concerned workman, whose names are indicated in the chart, which forms part of the award.

5. Thereafter, the concerned workmen filed applications before the Assistant Commissioner of Labour, the authority under the payment of Gratuity Act, claiming that it must be deemed that they were in service till 23.3.1994, i.e., the date on which the Arbitrator had passed the award and on that footing payment of gratuity should be made to them. The stand of the management was to effect that out of the 17 workmen concerned, 14 of the workmen had rendered service for a period between 6 to 18 months and as such they were not entitled to any gratuity. Out of the three other

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workmen, two had been terminated from service for valid reasons and also since they have not completed five years, they were not entitled to any gratuity and only one person was entitled to gratuity, which was payable.

6. The contention raised by the management was not accepted by the Assistant Commissioner of Labour who came to the conclusion that the concerned workmen must be deemed to be continuing in service till 23.3.1994 and it must be taken that only thereafter compensation was paid to them in lieu of their further continuance in service. For arriving at such a conclusion, the Assistant Commissioner of Labour emphasised on the fact that the Arbitrator in the award had granted two third of the backwages and therefore it must be construed as if such employees had been reinstated and had been paid some backwages. However, the authority had directed that gratuity should be calculated on the basis of payment of salary, which was actually made and not on the basis of minimum of wages payable as on 23.3.1994.

7. Against such an order of the original authority under payment of Gratuity Act, appeals were filed both by the management as well as by individual workman, which came to be decided by the Joint Commissioner of Labour -cum- appellate authority under the payment of Gratuity Act. The appellate authority confirmed the interpretation given by the original authority that the workmen were deemed to have been reinstated in service and accepted the contention raised in appeals of the individual workmen and observed that the calculation should be made on the basis of the Minimum Wages payable on 23.3.1994 and not on the basis of the salary which had actually been made, which was below the Minimum Wages payable. Such orders passed by the appellate authority had been challenged by the management in these batch of writ petitions.

8. Learned counsel appearing for the petitioner has submitted that the Arbitrator had never reinstated any of the workmen and on the other hand the Arbitrator had come to the categorical conclusion which reads as follows:

> "Any relief of re-instatement granted to the workers would not only lead to a resumption of the bickerings between the parties but would also affect the smooth functioning of the College and the hospital and more than that, the health and the lives of the patients coming to the hospital would also be endangered. I am therefore clearly of the view that the only relief that can be granted to the workers will be the payment of monetary compensation to them for their removal from service in derogation of the provisions of Sec.25F of the I.D. Act."

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9. Thereafter, the Arbitrator proceeded to determine what would be the fair compensation and while arriving at the fair compensation, the Arbitrator adopted the method of calculating two third of the backwages for the periods of non-engagement/termination and calculation of payment of salary for particular number of years. However, a fair reading of the award does not lead to the conclusion that there was in fact any re-instatement in service. On the other hand, the Arbitrator had made it amply clear that the question of re-instatement was not at all possible and the compensation in lieu of re-instatement could be granted. Even though the Arbitrator has calculated under two heads, one relating to calculation of two third of the backwages and the other relating to calculation of compensation by payment of salary for eight years, it cannot be construed that in fact the workmen had been re-instated even for a day. As a matter of fact, if it would be construed that they were reinstated, thereafter the question of further termination etc. would depend upon the provisions of the law applicable.

10. In my considered opinion the authorities have committed an error of law apparent on the face of the order by coming to the conclusion that it must be deemed that the workmen had been reinstated and they were in service till 23.3.1994.

11. Learned counsel appearing for the workmen has submitted that as a matter of fact the two authorities have considered the award in a particular manner and it cannot be said that there was an error apparent on the face of the order requiring any interference. However, in my opinion, taking into account the award of the Arbitrator in its entirety, it is difficult to accept the conclusion arrived at by respondents 1 and 2.

12. In such view of the matter, it must be held that the workmen concerned were never reinstated and therefore, those of the workmen who had not completed five years service were obviously not entitled to any payment of gratuity. In view of the aforesaid discussion, the order passed by the first and second respondents are liable to be set aside. However, as already submitted fairly at the threshold by the learned counsel for the petitioner that irrespective of the result of the case, the amount calculated as per the order passed by the appellate authority would be paid to the workmen concerned as Ex-gratia payment by the management. It is apparent that as per the order passed by the original authority, some amount has been deposited. However, the learned counsel for the petitioner has fairly conceded that the calculation would be made as per the observation of the appellate authority, that is to say, by taking into account the minimum wages payable on the date of the award passed by the Arbitrator. On the aforesaid basis, necessary calculation shall be made by the petitioner-management.

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12. The writ petitions are disposed of subject to the aforesaid observation. The amount deposited by the petitioner-management shall be permitted to withdraw by the concerned workmen. However, the balance amount to be calculated on the basis of the compensation by taking into account the minimum wages payable on the date of the award of the Arbitrator shall be calculated by the petitioner-management and shall be paid individually to the concerned workmen directly by the management within a period of eight weeks from the date of receipt of a copy of this order. It is made clear that the entire payment is considered as a payment of Ex-gratia to the concerned workmen. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Joint Commissioner of Labour
Appellate Authority under Payment of Gratuity Act
Chennai - 600 006.

2. The Asst. Commissioner of Labour,
Office of the Deputy Commissioner of Labour - I
(Authority under payment of Gratuity Act)
Chennai - 600 006.

3 ccs to Mr.S.Ramasubramaniam & Associates, Sr. 12394 to 12396
1 cc to Mr.S.T.Vardarajulu, Advocate, Sr. 11988
1 cc to the Govt. Pleader, Sr. 12200

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